

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11-13 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,447,258 to Suzuki in view of US 7,114,635 to Yamada.

Suzuki shows a fluid delivery device as seen in Fig. 1, having a tubular shaped outlet portion 22, a valve element 11 with a thin-walled portion 10, a cylindrical valve support member 6, a vent opening, see Fig. 1, the thin-walled portion of the valve element extends through an orifice in the outlet portion and seals against the cylindrical valve support until pressure in the dispensed fluid deforms the valve wall open. The delivery device is integrally formed and mounted on the neck of a container 31. Suzuki is silent about using the dispenser as an eye dropper and using a filter element in the air vent. Yamada shows a dispenser for an eye solution having an air vent 75 with a filter 78, see Fig. 6. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Suzuki to include a filter in the air vent to maintain the fluid in aseptic condition, Since the medical fluid, especially medical eye drops are applied directly to the eye which is an especially sensitive organ in the human body, it is strictly required to maintain the fluid in aseptic condition instillation as taught by Yamada.

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3. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,447,258 to Suzuki as modify by US 7,114,635 to Yamada as applied to claim 11 above and further in view of US 6,145,707 to Baudin.

The Suzuki-Yamada combination show all claimed features as discussed above except for the valve element or the outlet orifice being treated with an antibacterial treatment. Baudin shows a dispensing device as seen in Figs. 4 and 5, where the valve elements are treated with an antibacterial substance. It would have been obvious to a person with ordinary skill in the art at the time of the invention to modify the device of the Suzuki-Yamada combination by treating the outlet elements with an antibacterial substance to increase the protection of the product contained in the container as taught by Baudin.

4. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,447,258 to Suzuki as modify by US 7,114,635 to Yamada as applied to claim 11 above and further in view of US 4,917,271 to Kanner et al.

The Suzuki-Yamada combination show all claimed features as discussed above except for a fluid filter located upstream of the dispensing valve. Kanner show a dispenser as seen in Fig. 2, having a fluid filter element 22 located upstream of dispensing valve. It would have been obvious to a person with ordinary skill in the art at the time of the invention to modify the device of the Suzuki-Yamada combination by adding a fluid filter located upstream the dispensing valve in view of Kanner to prevent particles to flow into the valve and affect the valve operation or flow into an user's eye.

*Response to Arguments*

5. Applicant's arguments with respect to claims 11-19 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELVIN A. CARTAGENA whose telephone number is (571)272-4924. The examiner can normally be reached on M-F (8:30AM to 7:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. C./

Examiner, Art Unit 3754

/Kevin P. Shaver/

Supervisory Patent Examiner, Art Unit 3754